

## **4.102 Review, Interpretation and Enforcement**

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### **4.102.01 Appeals of Type II and III Decisions**

Appeals of any final decisions by the City must comply with the requirements of this section.

A. Standing to Appeal: The following rules prescribe who has the standing to appeal:

1. Type I (Administrative): Type I decisions by the Director are not appealable to any other decision-maker within the City.
2. Type II (Quasi-Administrative): For Type II decisions, only those persons who are adversely affected or aggrieved or who are entitled to notice have standing to appeal a Director's decision to the City Council.
3. Type III (Quasi-judicial): For Type III decisions, only those persons who participated either orally or in writing, or who are adversely affected or aggrieved have standing to appeal the decision of the Planning Commission or Design Review Board to the City Council.
4. Type IV (Quasi-Judicial): Type IV decisions are appealable to the Land Use Board of Appeals.

B. Notice of Intent to Appeal:

1. A notice of intent to appeal any Type II or Type III decision must be received in writing by the Director within twelve (12) days from the date notice of the decision is mailed to those entitled to notice. Late filing of any appeal shall be a jurisdictional defect and will result in the automatic rejection of any appeal so filed.
2. The following must be included as part of the notice of appeal:
  - a. The Department's file number and date the decision to be appealed was rendered;
  - b. The name, mailing address and daytime telephone number for each appellant;
  - c. A statement of how each appellant has standing to appeal;
  - d. A statement of the grounds for the appeal; and
  - e. The appropriate appeal fee. Failure to include the appeal fee for the costs of appeal

and transcript fee within the appeal period is a jurisdictional defect and will result in an automatic rejection. If an appellant prevails at hearing or on appeal, the transcript fee shall be refunded.

- C. Notice of the Appeal Hearing: The Director shall issue notice of the appeal hearing to all parties who signed in or participated, either orally or in writing, before the close of the public record. Notice of the appeal hearing shall contain the following information:
1. The file number and date of the decision being appealed;
  2. The time, date and location of the public hearing;
  3. The name of the applicant, owner and appellant (if different);
  4. The street address or other easily understood location of the subject property;
  5. A description of the permit requested and the applicant's development proposal;
  6. A brief summary of the decision being appealed and the grounds for appeal listed in the notice of appeal;
  7. A statement that the appeal hearing is confined to the issues raised in the notice of appeal; and
  8. A general explanation of the requirements for participation and the City's hearing procedures.

#### **4.102.02 Call-Up Review by the City Council: Type II and III Decisions**

- A. Authority: Whether or not an appeal is filed, the City Council may, by majority vote, initiate a review of a Type II or III decision.
- B. Procedures:
1. A summary of all Type II and III decisions shall be forwarded to the City Council as an information item by the Director at the time the decision is mailed to the applicant.
  2. Review under this Section shall be initiated before the adjournment of the first regular City Council meeting, following the date the City Council receives notification of the decision.
  3. Review shall replace a filed appeal of the decision. The appellants of any appeal filed before a City Council call for review, shall receive a full refund of the filing fee.
  4. The City Recorder will set the hearing date for the City Council review, considering the 120-day rule.
  5. The notice, hearing and decision procedures for a City Council review shall follow the provisions of the Woodburn Development Ordinance provided for appeals.

#### **4.102.03 Enforcement**

- A. Inspection and Right of Entry: When necessary to investigate a suspected violation of the Woodburn Development Ordinance, or an application for or revocation of any permit issued

under this ordinance, the Director may enter on any site or into any structure open to the public for the purpose of investigation, provided entry is done in accordance with law. Without a search warrant, no site or structure that is closed to the public shall be entered without the consent of the owner or occupant.

- B. Abatement: Any use or structure established, operated, erected, moved, altered, enlarged, painted, or maintained contrary to the Woodburn Development Ordinance is unlawful and a public nuisance, and may be abated.
- C. Civil Proceeding Initiated by City Attorney: The City Attorney, after obtaining authorization from the City Council, may initiate a civil proceeding on behalf of the City to enforce the provisions of the Woodburn Development Ordinance. This civil proceeding may include, but is not limited to, injunction, mandamus, abatement, or other appropriate proceedings to prevent, temporarily or permanently enjoin, abate, or set aside any use or structure established, operated, erected, moved, altered, enlarged, painted or maintained contrary to the Woodburn Development Ordinance, including revocation of all permits, to prevent, enjoin, abate or remove the unlawful location, construction, maintenance, repair, alteration or use.
- D. Civil Infraction: In addition to, and not in lieu of any other enforcement mechanisms, a violation of any provision of the Woodburn Development Ordinance constitutes a Class 1 Civil Infraction. Each violation is a separate infraction. Each violation of the Woodburn Development Ordinance constitutes a separate Civil Infraction, and each day that a violation of the WDO is committed or permitted to continue shall constitute a separate Civil Infraction.
- E. Remedies – Cumulative: The remedies provided for in this section are cumulative and not mutually exclusive.

#### **4.102.04      Expiration of a Development Decision**

- A. Decisions that Do Not Expire: A final decision on a change to the comprehensive plan, the Official Zoning Map, land use regulations or some component of these documents shall be permanent.
- B. Expiration Period: A final decision on any application shall expire within three years of the date of the final decision unless:
  - 1. A building permit to exercise the right granted by the decision has been issued;
  - 2. The activity approved in the decision has commenced; or
  - 3. A time extension, Section 4.102.05, has been approved.
- C. New Application Required: Expiration of a final decision shall require a new application for any use or development on the subject property that is not otherwise allowed outright.
- D. Deferral of the Expiration Period Due to Appeals: If a final decision is appealed to a review body beyond the jurisdiction of the City, the expiration period for the decision shall not begin until review before LUBA and the appellate courts has been completed, including any remand proceedings before the City. The expiration period provided for in this Section will begin to run on the date of final disposition of the appeal.

#### **4.102.05**      **Extension of a Development Decision**

The effective time period of a final decision may be extended for up to two years by the Director, subject to a Type II application. The request shall be approved unless significant changes have occurred to this ordinance or the use is no longer allowed as originally approved. In making a decision to grant the extension, the Director shall consider if there is a need to modify the decision or conditions of approval to meet standards in affect at the time of the extension request.

#### **4.102.06**      **Interpretation**

##### **A. Interpretations, Generally**

1. An ambiguous term in the Woodburn Development Ordinance may be interpreted in the final decision of any Type II, III or IV application or by a request for a formal interpretation by the City Council. A request for a formal interpretation may be initiated by the Director when, in the administration of the Code, the Director deems it appropriate that a question as to the intent of the Woodburn Development Ordinance be formally rather than administratively resolved. Alternatively, any person, upon application, may request a formal interpretation.
2. The purpose of a formal interpretation is to clarify the intent of the Woodburn Development Ordinance and its application in particular circumstances. The Council shall not, by interpretation, vary or modify any clear and unambiguous provisions of this ordinance. Formal interpretations shall be processed as a Type IV application.
3. Formal interpretations made by the Council shall control future administration and enforcement of the Woodburn Development Ordinance until vacated or superseded by Council or incorporated as an amendment of the Woodburn Development Ordinance.
4. The Director shall keep a log of all formal interpretations.

##### **B. Interpretation and Application of Code Language**

1. The terms or words used in this Code shall be interpreted as follows where the context demands: words in the present tense include the future; the singular number includes the plural and the plural number includes the singular; the word “shall” is mandatory and not discretionary; the word “may” is permissive; the term “should” is discretionary, the masculine gender includes the feminine and neuter; the term “this Code” shall be deemed to include the text of this Code, the accompanying Official Zoning Map and all amendments made hereafter to either; the term “standard” indicates a mandatory requirement; the term “guideline” indicates a norm that is accepted in the community but which is not a mandatory requirement.
2. The Director shall have the initial authority and responsibility to interpret all terms, provisions and requirements of this Code. The City Council shall have the final authority to interpret all terms, provisions and requirements of this Code.
3. The Code shall be read literally. Regulations are not more or less strict than as stated.
4. Proposals for uses where the code is silent or where the rules of the Code do not provide a basis for concluding that the use is allowed, are prohibited.

5. Uses of land not expressly allowed or not incidental to a permitted or conditional use are prohibited.
6. Where it is unclear whether or in what manner sections of this Code apply to a given situation, or if terms or sections are ambiguous or vague, the following should be applied as warranted under the circumstances:
  - a. Terms defined in Section 1.102 (Definitions) have specifically stated meanings unless the context clearly requires otherwise.
  - b. Terms not defined in Section 1.102 (Definitions) shall have the meaning set forth in the New Oxford American Dictionary, 2010 edition.
  - c. This Code shall be interpreted reasonably, reading questioned regulations in relation to other sections such that an interpretation most fully effectuates the intent and purpose of the regulations.
7. This Code shall be interpreted most favorably to provide all necessary authority to carry out its purposes and provisions.

#### **4.102.07      Modification of Conditions**

Any request to modify a condition of approval is to be considered pursuant to the procedure and the standards and criteria applicable to a new application of the type of permit or zone change that is proposed to be amended, except that the modification of a condition limiting the use of property may only be considered as a Type IV Official Zoning Map Change application.

#### **4.102.08      Performance Guarantees**

- A. When an applicant has an obligation to construct or improve public facilities or to construct improvements imposed as a condition of approval, the obligation shall be fulfilled prior to the issuance of a building permit unless the City Administrator has granted a written waiver of this requirement and the applicant has filed with the City Administrator a performance guarantee. The performance guarantee shall state the nature of the obligation, the time in which the obligation is to be met, identify the property subject to the obligation and contain security in a form acceptable to the City Administrator and in an amount equal to 120 percent of the cost of fulfilling the obligation as estimated by the City Administrator for the year in which fulfillment of the obligation is anticipated. A sufficient performance bond, cash deposit or a letter of credit are considered acceptable forms of security. Return of the security to the applicant shall be conditional upon the applicant fulfilling the obligation.
- B. As an additional and separate part of the performance guarantee, the applicant shall agree to maintain the public facility or improvement for a period of one year following acceptance by the City Administrator, to include but not be limited to repair, replacement and all things necessary to ensure its operational integrity.
- C. The security shall be forfeited to the City if the applicant does not fulfill the requirements stated in the performance guarantee and the City may use the security to complete the obligation or any part of it. Until the obligation is completed, the security shall remain in the custody of the City or shall be placed in an escrow account subject to City control.

- D. Upon receipt of written notice to the City Administrator that the public facility or required improvement has been completed and is ready for final inspection and acceptance, the City Administrator shall, with ten calendar days, make such inspection. If the City Administrator finds the work to be acceptable, there shall promptly be issued a final certificate stating the work has been completed and accepted.
- E. If the City Administrator determines that an applicant has failed to fulfill the obligation to complete the public facility or required improvement, written notice shall be given detailing the failure and stating the City's intention to use the security given to complete the obligation. If the City completes the obligation and the required security is not sufficient to compensate the City for costs incurred, the excess amount due to the City, plus a ten percent administrative charge, shall constitute a lien in favor of the City upon the real property subject to the obligation.
- F. The lien attaches upon entry in the City lien docket and the giving of notice of the claim for the amount due for the completion of the obligation. The notice shall demand the amount due, allege the insufficiency of the bond or other security to compensate the City fully for the cost of the fulfillment of the obligation, and allege the applicant's failure to complete the required obligation.
- G. Once docketed, the lien may be foreclosed in the manner prescribed by ORS Chapter 223 for foreclosing liens on real property.

#### **4.102.09      Reapplication Limited**

If the application is denied or withdrawn following the close of the public hearing, no reapplication for the same or substantially similar proposal may be made for one year following the date of final decision denying a permit.

#### **4.102.10      Revocation or Modification of a Previously Approved Permit**

- A. Authority to Revoke or Modify: The Planning Commission may initiate a proceeding to revoke or modify a quasi-judicial permit if the Planning Commission determines there is a substantial likelihood that any of the following conditions exists:
  - 1. An applicant, or the applicant's successor in interest, fails to fully comply with one or more conditions of permit approval, or otherwise does not comply fully with the City's approval.
  - 2. An applicant, or the applicant's successor in interest, failed to complete the work within the time frame or in the manner approved without obtaining an extension of time or modification of the permit from the granting authority.
  - 3. The activities of the use, or the use itself, are substantially different or have substantially increased in intensity from what was approved.
  - 4. When the use is subject to the nonconforming use regulations, the applicant has not obtained approval, or has substantially changed the use or substantially increased the intensity of the use after the use became nonconforming.

5. The applicant or the applicant's representatives either intentionally or unintentionally committed a material misrepresentation of fact in the application or the evidence submitted in support of the application.
  6. For purposes of this Section, "material misrepresentation of fact" means a misstatement of factual information that:
    - a. Was submitted by the applicant in support of the application;
    - b. Could have been corrected by the applicant at the time of application; and
    - c. Formed the sole basis for approval of the application pursuant to an applicable approval criterion.
  7. A "material misrepresentation of fact" does not include misstatements of fact made by City staff or caused by failure of another party to appear or adequately testify.
- B. Process for Revocation or Modification: Revocation or modification shall be processed as a Type IV decision. The Director shall have the burden of proving, based on substantial evidence in the whole record, that the applicant or the applicant's successor has in some way violated the City's approval.
- C. Possible Actions at the Revocation Hearing: Depending on the situation, the City may take any of the actions described below. If the decision is to modify the permit, the City may not approve a use that is more intense than originally approved, unless the possibility of this change has been stated in the public notice. Uses or development which are alleged to have not fulfilled conditions, violate conditions or to be inconsistent with the City's approval may be subject to the following actions:
1. The City may find that the use or development is complying with the conditions of the approval. In this case, the permit shall not be altered.
  2. The City may modify the permit if it finds that the use or development does not fully comply with the conditions of approval or otherwise does not comply with what was approved, that the violations are not substantial enough to warrant revocation and that the use can comply with the original approval criteria if certain conditions are met. In this case, the City may modify the existing conditions, add new conditions to ensure compliance with the approval criteria, or refer the case to the code compliance officer for enforcement of the existing conditions.
  3. The City may revoke a permit if it finds there are substantial violations of conditions or failure to implement conditions of a permit, such that the original approval criteria for the use or development are not being met.
- D. Effect of Revocation: In the event permit approval is revoked, the use or development becomes illegal. The use or development shall be terminated within thirty days of the date that all appeals periods have been exhausted, unless the decision provides otherwise. In the event the City Council's decision on a revocation request is appealed, the revocation action shall be automatically stayed until the appeal is resolved.

**4.102.11**      **Transfer of Approval Right**

Any final decision granted under this ordinance shall run with the land and shall transfer with ownership of the land, unless otherwise specified in the decision. Any conditions, time limits or other restrictions imposed with a decision shall bind all subsequent owners of the subject property.